

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CHRISTOPHER W.,

Claimant,

and

TRI-COUNTIES REGIONAL CENTER,

Service Agency.

OAH Case No. L 2006090471

**DECISION**

This matter was heard by Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, in Santa Maria, California, on November 3, 2006.

Joe Bremm, Branch Manager, Tri-Counties Regional Center (Regional Center or Service Agency), represented Service Agency.

Steven and Vickie W., Claimant's parents, represented Claimant with the assistance of John T. Richards (Richards), Senior Vocational Rehabilitation Counselor, Department of Rehabilitation (DOR).

Oral and documentary evidence was received at the hearing and the matter was submitted for decision.

**ISSUE**

Whether Claimant is eligible for Service Agency services by reason of a developmental disability within the meaning of the Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code section 4500 et seq. (Lanterman Act).

**FINDINGS OF FACT**

1. Claimant, an only child, is 20 years of age and resides with his parents.

2. Shortly after birth, Claimant developed jaundice, meningitis, and hydrocephalus, an enlargement of the cerebral ventricles accompanied by seizures. Claimant has not suffered any seizures since he was in the third grade and continues to take medication, Zonegran, to prevent their recurrence.

3. Claimant has received special education services during part of his formal schooling. He received occupational and physical therapies in pre-school and kindergarten. Services were discontinued in grades one through three. In fourth grade, staff of Lompoc Unified School District (District) conducted a psycho-educational assessment and concluded that while Claimant's verbal ability was in the average range his performance ability was in the borderline range. He was placed in the Resource Specialist Program during the fourth grade, which assistance was not provided during the fifth grade.

Claimant's parents requested the District to reassess him in the sixth grade. The evaluation yielded similar results: average verbal ability scores and borderline performance ability scores. As a result, he was again placed in the Resource Specialist Program, which he exited in the eighth grade.

The next assessment occurred in 2003, when Claimant was in the 11th grade. The school psychologist administered the Wechsler Adult Intelligence Scale – Third Edition (WAIS-III) and obtained a verbal score of 95 and a performance score of 73. He suggested the following special education supports: step-by-step, clear instructions, which should be repeated as necessary; extra time to complete tasks; flexibility in instruction; and career orientation.

Claimant's parents testified that they spent many hours each day helping him with homework. The amount of time spent varied inversely with the level of support received at school. He tended to regress once special education supports were withdrawn. They noted that Claimant functioned more independently in the 11th and 12th grades because he had the assistance of a resource specialist.

4. Claimant graduated from high school in May 2005. He thereafter enrolled in Allan Hancock College, a community college. He is enrolled in the Learning Assistance Program, a support program for students with disabilities, which includes additional time to complete tests, extra tutorial hours, and specialized learning resources. He is also receiving tutorial support from DOR.

5. Claimant started receiving the services of DOR in March 2006. He has been placed in a job as a customer service clerk at a local food retail store and receives the daily assistance of a DOR job coach. The job coach, Patricia Moses (Moses), testified at the hearing about Claimant's challenges and about her frequent intervention. During Claimant's first month at work, Moses was present the entire time he was at work. She has decreased her presence to approximately 65 percent of the time because DOR guidelines require it, not because of Claimant's improvement.

As observed by Moses, Claimant has difficulty staying on task, requiring verbal prompts to complete most, if not all, tasks. He has been unable to consistently perform relatively simple tasks requiring more than one step, such as cleaning up spills, checking prices, and retrieving shopping carts, without step-by-step prompting and modeling. Claimant is slow to make decisions and appears to be confused by multi-step tasks. He has difficulty remembering the shelf location of food items. He has failed to distinguish between items that appear similar, a skill he needs to master to assist with price checks or re-stocking of items. He does not always respond to customer inquiries, such as the location of a specific item, an area that is improving with Moses' involvement. His immediate supervisor, who complained that Claimant failed to follow instructions and wandered off when assigned to a task, wanted to terminate Claimant's employment before the expiration of the 60-day probation period, but relented after Moses agreed to increase the time spent with Claimant.

6. During his first month of employment, Claimant was often late to work. Moses informed Claimant's parents about the problem and they prepared detailed bus schedules for him. The schedules set forth the time Claimant must leave home and the time he must pick up the bus for alternative work reporting times. Claimant has been able to follow these specific and detailed directions and has improved his on-time arrival.

7. Because of his difficulties at work, DOR referred Claimant to Service Agency for services, as DOR services are of limited duration.

8. Service Agency referred Claimant to William H. Staso, Ph.D., for a psychological assessment. Dr. Staso administered the Vineland Adaptive Behavior Scales (Vineland), the WAIS-III, and the Bender Gestalt to assess cognitive ability and adaptive skills.

Claimant's WAIS-III full scale index results were in the borderline range (76 to 83), with higher results in the verbal index (in the 85 to 93 range, or average) than in the performance index (in the 68 to 79 range, or borderline to low average).<sup>1</sup> Dr. Staso noted that this discrepancy had been noted in all of Claimant's prior cognitive assessments and that there were significant differences between the subtests, particularly those in the verbal index. Thus, verbal scores were aided by Claimant's subject matter knowledge (91st percentile in the "Information" subtest) and vocabulary (50th percentile), and hurt by his problems with arithmetic, which Dr. Staso attributed to problems with short-term memory. Performance index subtest results were consistently in the borderline to below average range, with one exception, picture completion, where Claimant was able to readily spot missing elements in pictures.

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<sup>1</sup> These are standardized test results with a mean of 100 and a standard deviation of 15.

In the Bender Gestalt test, Claimant was able to correctly interpret the spatial orientation of what he saw and to transfer and integrate the information through his motor system.

In the Vineland, Claimant achieved results in the high borderline to low average range, or 78 in the communications domain, 80 in the daily living skills domain, and 78 in the socialization domain.<sup>2</sup> In summarizing Claimant's deficits, Dr. Staso noted that he seems to lack the level of independence common to someone his age, that there are gaps in his understanding and reasoning ability, that he struggles to judge the probable outcomes of multifaceted situations, and that he is likely to misinterpret or incorrectly focus on events and factors surrounding them.

9. A letter dated December 30, 2005, from Cindy Blifeld, M.D., Claimant's long-time pediatrician, was received in evidence. It was written in a successful attempt to excuse Claimant from jury service. Dr. Blifeld writes: "[Claimant] is a 19 3/12-year old male with a moderate learning disorder associated with a neonatal GBS meningitis and consequent hydrocephalus and seizure disorder. He has difficulty with information processing via verbal and written delivery, difficulty with both fine and gross motor tasks, and difficulty performing work in a specified time-frame. If he cannot accomplish the work needed in an enforced time-frame, he gets flustered and stressed. This will make it very difficult for him to perform as needed in the context of jury selection and performance. His ability to process information is not predictable in this context. . . ."

10. Claimant's parents testified that they "run his life." They constantly remind him to brush his teeth, to get dressed, and to take his medications. He tends to forget to take his medications or to perform his chores. They are concerned that without Service Agency's or another agency's help Claimant will not be able to take care of himself.

11. Service Agency staff psychologist Lusa Hung, Ph.D., was part of the Regional Center team that found Claimant not eligible for services and testified about the agency's analysis. Dr. Hung noted that Claimant's cognitive ability and adaptive skills measurements were consistently above the mental retardation threshold of 70. In her opinion, Claimant's ability and adaptive skills show that he does not have mental retardation or conditions closely related to mental retardation or that require treatment similar to that required by individuals with mental retardation. His seizures appear controlled by medication and do not constitute a substantial disability for Claimant. Lastly, Service Agency did not have any evidence of cerebral palsy or autism. Dr. Hung's opinion that Claimant did not have a qualifying disability remained the same after hearing the testimony of Claimant's parents and DOR witnesses.

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<sup>2</sup> On this scale, where scores are compared to a normative sample, a 100 score is average.

## LEGAL CONCLUSIONS

1. In order to be eligible to receive services from a regional center, a claimant must have a developmental disability, which is specifically defined as “a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature.” (Health & Saf. Code, § 4512, subd. (a).)

2. In this case, no argument or evidence was presented to establish that Claimant has cerebral palsy or autism. Claimant has suffered seizures in the past, but they have been controlled with medication, and do not constitute a substantial disability for Claimant.

3. Claimant has not received a diagnosis of mental retardation, and the expert testimony and evidence received at the hearing points to a contrary conclusion. His cognitive ability has consistently been measured at a level higher than that required to establish mental retardation. Claimant’s adaptive skills, as measured by the results of the only Vineland in evidence or referred to in the testimony, are consistent with his measured ability. Claimant’s strengths in certain areas, particularly verbal ability, differentiate him from individuals with mental retardation and suggest he needs treatment different from that required by individuals with mental retardation. Therefore, Claimant does not have mental retardation, a condition that has a close relationship to mental retardation, or a condition that requires treatment similar to that received by individuals with mental retardation.

4. As set forth above, Claimant does have difficulty with self-direction, capacity for independent living, and capacity for economic self-sufficiency. However, the deficits have not been shown to be the result of a developmental disability as defined in the Lanterman Act.

5. By reason of the foregoing, Claimant does not have a developmental disability as defined in the Lanterman Act.

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ORDER

Claimant's appeal is denied.

DATED: \_\_\_\_\_

SAMUEL D. REYES  
Administrative Law Judge  
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter and both parties are bound by this Decision. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.